



REQUEST FOR PROPOSAL

SANITARY SEWER FLOW MONITORING SERVICES

JUNE 2015

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1. SCOPE OF SERVICES

The City of Belmont is accepting proposals from qualified firms to perform the following services:

1. Provide all necessary calibrated flow monitoring and communications equipment to accurately and continuously measure sanitary sewer flows at twenty two locations for a three-year period. Contractor shall have full responsibility of its employee's safety and providing appropriate safety equipment.
2. Install flow monitoring and communications equipment at the locations specified by City staff and provide the following:
 - a. in-situ calibration of flow instruments to observed site conditions
 - b. manually confirm depth and velocity measurement of each monitor
 - c. configure instruments for 15-minute data collection and 1-hour data transmission intervals
 - d. start up the system and ensure accurate readings are being recorded
 - e. install additional or move existing flow monitors as requested by the City within 10 business days
3. Establish communications at two rain gauge installation points, monitor and record rain totals for the project's duration.
4. Collect flow data for the period of 36 months.
5. Provide maintenance and calibration of all equipment to ensure uninterrupted data collection for the duration of the project.
6. Conduct monthly maintenance of each flow meter to include, at a minimum, a sensor scrub, depth and velocity verifications, inspection of all points of connection, battery replacement (if needed). Respond to instrument failure, when it occurs, within 3 business days.
7. Perform data processing and analysis for all data collected.
8. All data should be available 24/7 to view and export from a website and/or software provided by the firm for a date range entered by the user. The firm shall conduct a customer training on website and/or software navigation and features, including report generation. Technical support shall be provided on as needed basis. At the end of the project, all data collected shall become the property of the City.
9. Prepare and deliver monthly and annual flow reports on the collected data.
10. Remove flow monitoring equipment and associated hardware; restore utilities to their original configuration at the end of monitoring period.

2. CONTRACT TERMS

The contract will be issued by the City of Belmont. The term of the contract will be three (3) years. A sample of the City's Standard Services Contract is attached for your review. Comments on this agreement should be included with your proposal.

Prevailing Wage

Consultant shall comply with the State of California's Prevailing Wage Rate requirements in accordance with California Labor Code, Section 177, and all federal, state and local laws and ordinances applicable to work.

Section 1720 of the *State Labor Code* which states in part: "For purposes of this paragraph, "construction" includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work."

Fees

Fees shall be negotiated and established on a time and material basis with a not to exceed amount, supported by an agreed schedule of rates and mark-ups. The provisions of 48 CFR, Part 31, et seq, "Cost Principles and Procedures," and 49 CFR, Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" will apply to the consultant contract and to all subcontracts in excess of \$25,000.

Progress invoices will be paid on a monthly basis related to the progress of the work. Fees for sub-consultants involved in this project hired by the consultant shall be approved by the City in advance of incurring such fees. City reserves the right to change the funding of the project.

3. PROPOSAL REQUIREMENTS

Proposals shall be submitted on or before 2:00 p.m. on Wednesday, June 24, 2015. The City reserves the right not to accept late submissions.

Proposals shall be submitted in either of following ways:

Three (3) copies of the proposal are to be submitted to:

Bozhena Palatnik - Associate Civil Engineer
City of Belmont Public Works Department
1 Twin Pines Lane, Suite 385
Belmont, CA 94002-3890

or

PDF of the proposal emailed to bpalatnik@belmont.gov

The proposal shall include only relevant information as listed below:

1. Description of flow monitoring services.

Describe the services proposed including any analytical tools provided.

2. System requirements and timelines.

Describe any system requirements needed for implementation. Also include typical lead times for installation.

3. References

Provide references for the three most directly applicable projects/service agreements, with current verified telephone numbers, so that we may contact them and ask about your services.

4. Agreement for Service

The contract will be issued by the City of Belmont. A sample of the City's Services Agreement is attached for review. Comment on this agreement should be included with your submittal.

5. Fees and Level of Effort

The proposal shall include a fee schedule in a separate envelope, along with a level of effort breakdown (name, classification, hours, etc.).

4. SELECTION

Pursuant to California Government Code Section, 4525-4529.5 firms shall be selected on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required.

Below is a schedule of project award:

June 25 – July 3, 2015	City evaluates proposals and conducts interviews (if necessary)
July 6, 2015	City selects successful proposal
July 14, 2015	City Council approves successful proposal and award of contract

If there are any questions regarding this request for proposal, please contact Bozhena Palatnik at (650) 595-7463.

Attachments: City's Standard Services Contract

CITY OF BELMONT
SERVICE AGREEMENT

Sanitary Sewer Flow Monitoring Services

This Service Agreement (hereinafter "Agreement") is entered into by the City of Belmont, a municipal corporation (hereinafter "City"), and _____, (hereinafter "Consultant"). City and Consultant may be collectively referred to herein as the "parties."

RECITALS

- A. City requested a proposal from Consultant to perform the services generally including: Survey control and Survey staking.
- B. In response to the City's request, Consultant submitted a proposal, and, after negotiations, Consultant agreed to perform the services more particularly described on Exhibit "A", in return for the compensation described in this Agreement and Exhibit "B".
- C. In reliance upon Consultant's documentation of its qualifications, the City finds that Consultant has demonstrated the requisite qualifications, experience, training, and expertise to perform the requested services.

IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS IDENTIFIED HEREIN, THE PARTIES AGREE AS FOLLOWS:

- 1. **SCOPE OF SERVICES.** Consultant shall perform the services described in Exhibit "A", attached hereto and incorporated herein by reference, in accordance with the terms and conditions contained in this Agreement.
- 2. **TIME FOR PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall commence performance, and shall complete all required services no later than the dates set forth in Exhibit "A." Any services for which times for performance are not specified in this Agreement shall be commenced and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Consultant. Consultant shall submit all requests for extensions of time to the City in writing no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due.
- 3. **PAYMENT.**
 - 3(A). **Billing.** In order to request payment, Consultant shall submit monthly invoices to the City identifying the services performed and the charges therefore (including an identification of personnel who performed the services, hours worked, hourly rates, and reimbursable expenses), based upon the Consultant's billing rates (set forth on Exhibit "B"). The City shall make monthly payments to Consultant for services which are performed in accordance with this Agreement, to the satisfaction of the City.

3(B). **“Not to Exceed” Compensation.** The compensation payable to Consultant for the services identified in Exhibit “A” shall not exceed _____. Consultant shall not perform any services beyond the services identified in Exhibit “A” without prior written authorization from the City’s Authorized Representative. If the City’s Authorized Representative provides authorization for additional services, the total compensation payable to the Consultant under this Agreement shall not exceed _____.

3(C). **Consultant’s Failure to Perform.** In the event that Consultant performs services which do not comply with the requirements of this Agreement, Consultant shall, upon receipt of written notice from the City, re-perform the services (without additional compensation to the Consultant). If Consultant’s failure to perform in accordance with this Agreement causes damages to the City, Consultant shall reimburse the City for the damages incurred (which may be charged as an offset to Consultant’s payment).

4. **AUTHORIZED REPRESENTATIVES.**

4(A). **Consultant’s Authorized Representative.** Consultant understands that, in entering into this Agreement, the City has relied upon Consultant’s ability to perform in accordance with its representations regarding the qualifications of the Consultant (including the qualifications of its Authorized Representative, its personnel, and its subconsultants, if any). All services under this Agreement shall be performed by, or under the direct supervision of, Consultant’s Authorized Representative.

4(B). **City’s Authorized Representative.** For the performance of services under this Agreement, the Consultant shall take direction from the City’s Authorized Representative Dalia Manaois., unless otherwise designated in writing by the City’s Authorized Representative or the City Manager.

5. **INFORMATION AND DOCUMENTATION.**

5(A). **Information from City.** City has made an effort to provide Consultant with all information necessary for Consultant’s performance of services under this Agreement. If Consultant believes additional information is required, Consultant shall promptly notify the City, and the City will provide to Consultant all relevant non-privileged information in City’s possession.

5(B). **Consultant’s Accounting Records.** Consultant shall maintain all accounting records related to this Agreement in accordance with generally accepted accounting principles and state law requirements, and in no event for less than four years. Consultant’s accounting records shall include, at a minimum, all documents which support Consultant’s costs and expenses related to this Agreement, including personnel, subconsultant invoices and payments, and reimbursable expenses. Consultant’s accounting records shall be made available to City within a reasonable time after City’s request, during normal business hours.

5(C). **Ownership of Work Product.** All original documents prepared by Consultant (including its employees and subconsultants) for this Agreement (“work product”), whether complete or in progress, are the property of the City, and shall be given to the City at the completion of Consultant’s services, or upon demand by the City. Consultant shall have a right to make and keep copies of the work product. Consultant shall not reveal the work product, or make it available, to any third party without the prior written consent of the City.

6. **RELATIONSHIP BETWEEN THE PARTIES.** Consultant is, and at all times shall remain, an independent contractor solely responsible for all acts of its employees, agents, or subconsultants, including any negligent acts or omissions. Consultant is not City's agent, and shall have no authority to act on behalf of the City, or to bind the City to any obligation whatsoever, unless the City provides prior written authorization to Consultant. Consultant is not an officer or employee of City, and Consultant shall not be entitled to any benefit, right, or compensation other than that provided in this Agreement.
7. **CONFLICTS OF INTEREST PROHIBITED.** Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. Consultant shall comply with all requirements of the Political Reform Act (California Government Code Sections 81000, *et seq.*) and other laws relating to conflicts of interest, including: (a) Consultant shall not make or participate in a decision made by the City if it is reasonably foreseeable that the decision may have a material effect on Consultant's economic interest, and (b) if required by law, Consultant shall file financial disclosure forms with the City Clerk. If Consultant maintains or acquires a conflicting interest, any contract with the City (including this Agreement) involving Consultant's conflicting interest may be terminated by the City.
8. **NONDISCRIMINATION.** Consultant shall not discriminate against any person related to the performance under this Agreement (including any employee or applicant) because of race, color, religious creed, national origin, physical disability, mental disability, medical condition, marital status, sexual orientation, or sex.
9. **COMPLIANCE WITH LAW AND STANDARD OF CARE.** Consultant shall comply with all applicable legal requirements including all federal, state, and local laws (including ordinances and resolutions), whether or not said laws are expressly stated in this Agreement. Consultant shall perform services under this Agreement using a standard of care equal to, or greater than, the degree of skill and diligence ordinarily used by reputable professionals, with a level of experience and training similar to Consultant, performing under circumstances similar to those required by this Agreement.
10. **LABOR CODE REQUIREMENTS.**
 - 10(A). **Hours of Labor.** As required by Labor Code Section 1810 and 1813, the parties stipulate as follows. Eight hours labor constitutes a legal day's work. The Contractor shall forfeit, as penalty to the City, \$25 for each workman employed in the performance of the Contract by the Contractor or by any subcontractor under him for each calendar day during which such workman is required or permitted to work more than eight hours in any one day and 40 hours in any one calendar week in violation of Labor Code Sections 1810 to 1815, except that work performed by employees of the Contractor in excess of eight hours per day and 40 hours during any one week shall be permitted upon compensation for all hours worked in excess of eight hours per day at not less than one-and-one-half times the basic rate of pay.
 - 10(B). **Prevailing Wage.** The services to be performed under this agreement are for "Public Works" within the meaning of Labor Code Sections 1720 to 1861. Contractor must therefore comply with the prevailing wage requirements of Labor Code Sections 1720 to 1780.

10(C). Wage Rates.

10(C)(1). In accordance with Labor Code Section 1773.2, the City has obtained from the Director of the California Department of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the work is to be performed for each craft, classification, or type of worker needed to execute the contract, a copy of which is hereby incorporated by reference. Copies of the prevailing rates of per diem wages are on file in City's office and are available to any interested party.

10(C)(2). The Contractor must post a copy of the prevailing rate of per diem wages at each job site.

10(C)(3). The term "per diem wages" is defined in Labor Code Section 1773.1.

10(D). Failure to Pay Prevailing Wages.

10(D)(1). In accordance with Labor Code Section 1775, the Contractor will forfeit as a penalty to the City an amount determined by the Labor Commissioner under Section 1775 for each calendar day or portion thereof for each workman paid less than stipulated prevailing wage rates for such work or craft in which such worker is employed for any work done under the Contract by the Contractor or by any subcontractor under the Contractor in violation of the provisions of the Labor Code.

10(D)(2). As required by Labor Code Section 1775, the parties stipulate that the contractor and subcontractors must comply with Section 1775, and in the event of non-compliance with payment of prevailing wages to workers, the contractor or subcontractor must pay the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate to each worker.

10(D)(3). The City will not recognize any claim for additional compensation because of the payment by the Contractor of any wage rate in excess of the prevailing wage rate set forth in the Contract. The possibility of wage increases is one of the elements to be considered by the Contractor in determining his bid, and will not under any circumstances be considered as the basis of a claim against the City on the Contract.

10(E). Payroll Records.

10(E)(1). The Contractor and each subcontractor must comply with Labor Code Section 1776 and all requirements of contractors stated therein for the maintenance, inspection and certification of payroll records.

10(E)(2). The Contractor and each subcontractor who fails to timely furnish payroll records or make the records available for inspection will forfeit to the City the penalty for non-compliance set forth in Labor Code Section 1776 for their respective failure.

10(F). Apprentices. This subsection applies to contracts for Public Works involving \$30,000 or more.

10(F)(1). The contractor and each subcontractor must comply with the requirements for employment and compensation of apprentices as set for in Labor Code Section 1777.5. The prime Contractor is responsible for compliance with Labor Code Section 1777.5 for all apprenticeable occupations.

10(F)(2). As required by Labor Code Section 1773.3, the City will send notice of the award of this Contract to the Division of Apprenticeship Standards within five days after award.

10(G). **Discrimination.** The contractor and each subcontractor must comply with the anti-discrimination requirements of Labor Code Section 1777.6.

10(H). **Worker's Compensation.**

10(H)(1). In accordance with Labor Code Section 1860, the contractor and each subcontractor must secure the payment of workers' compensation for their employees as required by Labor Code Section 3700.

10(H)(2). Before performing the work, the Contractor must sign and file with the City, the certification required by Labor Code Section 1861.

10(I). **Subcontractor Eligibility.** Consultant acknowledges that under Public Contract Code Section 6109 no contractor or subcontractor who is ineligible to bid or work on, or be awarded, a public works project under Labor Code Section 1777.1 or 1777.7 may bid on, be awarded, or perform work as a subcontractor on, a public works project. Consultant is prohibited from performing work on a public works project with a subcontractor who is ineligible to perform work on the public works project under Labor Code Section 1777.1 or 1777.7.

11. **BUSINESS LICENSE.** The Consultant shall apply for and pay the business tax and registration tax for a business license, in accordance with the Belmont City Code.

12. **INSURANCE.** Consultant must, throughout the duration of this Agreement, maintain insurance to cover Consultant (including its agents, representatives, subconsultants, suppliers, and employees) in connection with the performance of Work under this Agreement, including against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work. This Agreement identifies the minimum insurance levels with which Consultant must comply; however, the minimum insurance levels do not relieve Consultant of any other performance responsibilities under this Agreement (including the indemnity requirements). City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

12(A). **Coverage.** Consultant must maintain insurance in the following minimum levels:

12(A)(1). **Workers' Compensation.** Workers' compensation coverage as required by the State of California, with statutory limits.

12(A)(2). **Commercial General Liability (CGL).** Commercial general liability with coverage at least as broad as ISO form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury

\$1,000,000 per occurrence. and \$2,000,000 aggregate.

12(A)(3). Employer's Liability. Employer's liability in an amount not less than \$1,000,000 per accident for bodily injury or disease.

12(A)(4). Automobile Liability. Automobile liability with coverage at least as broad as ISO Form Number CA 00 01 covering any auto (Code 1), or if Consultant has no owned autos, hired, (Code 8) and non-owned autos (Code 9) in an amount not less than \$1,000,000 per accident for bodily injury and property damage (coverage required to the extent applicable to Consultant's vehicle usage in performing services hereunder).

12(A)(5). Professional Liability. For design-build projects, or if the Work requires Consultant to provide professional services related to environmental hazards, professional liability in an amount not less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

12(B). Additional Coverage. Consultant may carry, at its own expense, any additional insurance it deems necessary or prudent. If Consultant maintains higher levels than the minimums shown above, City requires and shall be entitled to coverage for the higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum levels of insurance and coverage shall be available to the City.

12(C). Insurer Qualifications. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Entity. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

12(D). Deductibles. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either:

12(D)(1). Consultant must reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or,

12(D)(2). Consultant must provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

12(E). Subrogation Waiver. Consultant hereby grants to City a waiver of any right to subrogation which any insurer of Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy must be endorsed with a waiver of subrogation in favor of City for all work performed by Consultant, its employees, agents and subcontractors. This provision applies regardless of whether or not the City has requested or received a waiver of subrogation endorsement from the insurer.

12(F). Evidence of Coverage. Concurrently with the execution of this Agreement, Consultant must furnish City with original certificates and amendatory endorsements, or copies of information or declaration page listing all policy endorsements of the insurance required hereunder. However, failure to obtain the required documents before the work beginning shall not waive Consultant's obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

12(G). Endorsements. The insurance policies must be endorsed as follows:

12(G)(1). For commercial general liability and automobile liability insurance, the City (including its elected officials, employees, and agents) must be named as an additional “insured”. The endorsement must include liability arising out of work or operations performed by or on behalf of Consultant including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired or borrowed by or on behalf of Consultant. For commercial general liability, the policy must be endorsed with a form at least as broad as ISO form CG 20 10, GC 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used.

12(G)(2). Consultant’s insurance is primary to any other insurance (including self-insurance) available to the City (including its elected officials, employees, and agents) with respect to any claim arising out of this Agreement. Any insurance maintained by the City shall be excess of the Consultant’s insurance and shall not contribute with it.

12(G)(3). No policy shall be canceled, limited, or allowed to expire without renewal until after 30 days written notice has been given to the City by first class mail.

12(H). Claims Made Policies. If any required coverage is made on a claims-made form:

12(H)(1). The “Retro Date” must be shown, and must be before the date of the contract or the beginning of contract work.

12(H)(2). Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.

12(H)(3). If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a “Retro Date” prior to the contract effective date, Consultant must purchase “extended reporting” coverage for a minimum of five (5) years after completion of contract work.

12(H)(4). A copy of the claims reporting requirements must be submitted to City for review.

12(H)(5). If the services involve lead-based paint or asbestos identification/remediation, Consultant’s Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, Consultant’s Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

12(I). Subcontractors. Consultant must require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant must ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors must provide coverage with a format least as broad as CG 20 38 04 13.

13. REPORTING DAMAGES. If any damage (including death, personal injury or property damage) occurs in connection with the performance of this Agreement, Consultant shall immediately notify the City Risk Manager’s office by email at finance@belmont.gov, and Consultant shall promptly submit to the City’s Risk Manager and the City’s Authorized Representative, a written report (in a form acceptable to the City) with the following information:

- (a) name and address of the injured or deceased person(s), (b) name and address of witnesses, (c) name and address of Consultant's insurance company, and (d) a detailed description of the damage and whether any City property was involved.

14. RESPONSIBILITY FOR LOSS.

14(A).The City and its elected officials, officers, employees, agents and volunteers, shall not be answerable or accountable in any manner: for any loss or damage that may happen to the work or any part thereof; for any loss or damage to any of the materials or other things used or employed in performing the work; for injury to or death of any person (including but not limited to workers or the public) from any cause whatsoever; or for damage to property from any cause whatsoever.

14(B).The Consultant shall be responsible for any liability imposed by law and for injuries to or death of any person (including but not limited to workers and the public) or damage to property resulting from defects or obstructions or from any cause whatsoever during the progress of the work or at any time before its completion and final acceptance. The Consultant shall indemnify and save harmless the City of Belmont and its elected officials, officers, employees, agents and volunteers from all claims, suits or actions of every name, kind and description brought for, or on account of, injuries to or death of any person (including but not limited to employees of Consultant, of subcontractor, or of any other person, firm or entity and the public) or damage to property arising from any cause whatsoever during the progress of the work or at any time before its final completion and acceptance. Consultant's indemnification shall specifically include, but not be limited to, all claims arising out of: contract claims, property damage, personal injury, and any infringement of patent rights or copyrights incidental to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents. Consultant's indemnification shall include any and all costs, expenses, court costs, attorneys' fees and liability incurred by the City in enforcing the provisions of this section, and in defending against such claims, whether the same proceed to judgment or not. Consultant shall reimburse City for any expenditures City incurs by reason of such matters. The duty of the Consultant to indemnify and save harmless includes the duties to defend as set forth in Section 2778 of the Civil Code. This indemnification shall survive termination of the Contract.

The Consultant waives any and all rights to any type of express or implied indemnity against the City, and its officers, officials, agents, employees and volunteers. It is the intent of the parties that the Consultant shall indemnify and hold harmless the City, and its elected officials, officers, agents, employees and volunteers from any and all claims, suits, or actions arising from any cause whatsoever as set forth above regardless of the existence or degree of fault or negligence on the part of the City, the Consultant, the subcontractor or employee of any of these, other than the sole negligence, active negligence or willful misconduct of the City, and its elected officials, officers, agents, employees and volunteers.

14(C).In addition to any remedy authorized by law, so much of the money due the Consultant under and by virtue of the Agreement as shall be considered necessary by the City may be retained by the City until disposition has been made of such suits or claims for damages as aforesaid.

14(D).Neither the elected officials, officers, agents, employees not volunteers of City, nor any

officer or employee of any county, city or district shall be personally responsible for any liability arising under or by virtue of the Agreement.

15. **TERM OF THE AGREEMENT.** The term of this Agreement shall commence on the date last signed by the parties, below, and shall continue until completion of all services in accordance with the timing requirements set forth in Exhibit “A” and paragraph 2 of this Agreement. This Agreement may be terminated by the City without cause upon fifteen (15) days written notice to Consultant. If the City exercises its right to terminate this Agreement in accordance with this paragraph, the City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, through and including the date of termination, but not to exceed the payments according to the rates specified in Exhibit “B” or the maximum amount authorized under paragraph 3 of this Agreement.
16. **DEFAULT.** If either party (“demanding party”) has a good faith belief that the other party (“defaulting party”) is not complying with the terms of this Agreement, the demanding party shall give written notice of the default (with reasonable specificity) to the defaulting party, and demand the default to be cured within ten days of the notice. If: (a) the defaulting party fails to cure the default within ten days of the notice, or, (b) if more than ten days are reasonably required to cure the default and the defaulting party fails to give adequate written assurance of due performance within ten days of the notice, then (c) the demanding party may terminate this Agreement upon written notice to the defaulting party.
17. **NOTICES.** All notices required or contemplated by this Agreement shall be in writing and shall be delivered to the respective party as set forth in this section. Communications shall be deemed to be effective upon the first to occur of: (a) actual receipt by a party’s Authorized Representative, or (b) actual receipt at the address designated below, or (c) three working days following deposit in the United States Mail of registered or certified mail sent to the address designated below. The Authorized Representative of either party may modify their respective contact information identified in this section by providing notice to the other party.

TO: City of Belmont

Attn: Bozhena Palatnik
Associate Engineer
One Twin Pines Lane, Suite 385
Belmont, CA 94002

To: Consultant

Attn:

18. **HEADINGS.** The heading titles for each paragraph of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.
19. **SEVERABILITY.** If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the parties’ intent under this Agreement.
20. **GOVERNING LAW, JURISDICTION, AND VENUE.** The interpretation, validity, and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws

of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Mateo.

21. **ATTORNEY'S FEES.** In the event any legal action is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.
22. **ASSIGNMENT AND DELEGATION.** This Agreement, and any portion thereof, shall not be assigned or transferred, nor shall any of the Consultant's duties be delegated, without the written consent of the City. Any attempt to assign or delegate this Agreement without the written consent of the City shall be void and of no force or effect. A consent by the City to one assignment shall not be deemed to be a consent to any subsequent assignment.
23. **MODIFICATIONS.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
24. **WAIVERS.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
25. **CONFLICTS.** If any conflicts arise between the terms and conditions of this Agreement and the terms and conditions of the attached exhibits or any documents expressly incorporated, the terms and conditions of this Agreement shall control.
26. **ENTIRE AGREEMENT.** This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the services described herein. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all.
27. **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Consultant and the City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the City and Consultant do hereby agree to the full performance of the terms set forth herein.

CITY OF BELMONT	CONSULTANT
By: _____ Greg Scoles, City Manager	By: _____ _____ (print name) (print title)
Date: _____	Date: _____
APPROVED AS TO FORM	By: _____ _____ (print name) (print title)
_____ Scott M. Rennie, City Attorney	Date: _____
FUNDING VERIFIED	
_____ Thomas Fil, Finance Director	